

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 716 OF 2007

SUMAN DALMIA

Appellant (s)

VERSUS

STATE BY DY. SUPTD.OF POLICE, TAMIL NADU

Respondent(s)

(With office report)

WITH CRIMINAL APPEAL NO. 717 of 2007

(With Appln. for impleadment and with office report)

Date: 19/09/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s)

Mr. A.K. Ganguli, Sr.Adv.

Mr. S. Ravi Shankar,Adv.

Mrs.S. Yamunah Nachiar,Adv.

Mr. Chaitanya Safaya,Adv.

Ms. Barnali Basak,Adv.

For Respondent(s)

Mr. S.Guru Krishna Kumar,AAG State of TN

Mr. B.Balaji,Adv.

Mr. A. Prasanna Venkat,Adv.

Mr. S.R. Singh, Sr.Adv.

Mr. B. Karunakaran,Adv.

Mr. V. Balaji,Adv.

Mr. Rakesh K. Sharma,Adv.

Mr. R.S. Yadav,Adv.

Mr. Narendra Kumar ,Adv

UPON hearing counsel the Court made the following

O R D E R

Crl.M.P.No. 7488 of 2011 - Application for impleadment is dismissed.

Both the appeals are disposed of in terms of the signed order.

| (KUSUM SYAL)
| SR.P.A| | (M.S. NEGI)
| | COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 716 OF 2007

SUMAN DALMIA

Appellant (s)

VERSUS

STATE BY DY. SUPTD.OF POLICE, TAMIL NADU

Respondent(s)

WITH CRIMINAL APPEAL NO. 717 of 2007

O R D E R

These two appeals, one by the mother and other by the son, are directed against the common judgment dated 10th August, 2006 of the Division Bench of the High Court of Madras in Criminal Appeal No. 576 of 2004 and Criminal Revision No. 1588 of 2004.

The case of the prosecution, as projected before the Trial Court, was that the deceased Archana was subjected to cruelty pursuant to demand of dowry from the date of her marriage i.e. on 22.1.1999 till 30.1.2001, when she breathed her last unable to bear the torture.

According to the prosecution, the ultimate suicide committed by the deceased made the appellant and the other accused liable for sentence punishable under Sections 498-A and 304-B of the Indian Penal Code. (hereinafter referred to as "IPC") as well as under sections 4 and 6 (2) of the Dowry Prohibition Act. As many as, 28 witnesses were examined on the side of the prosecution besides marking Exs.P-1 to P-62 and M.Os 1 to 10 which were placed before the Court. On the side of the accused DW 1 was examined and Ex.D-1 was marked. There was a court witness CW1 Rohini through whom Exc.C-1 to C-3 came to be marked. All together five accused were charged before the trial court, of whom A-1 to A-3 alone were convicted, A-4 and A-5 who are the brother and sister of A-1, were acquitted. A-1 is the husband of the deceased Archana while A-3, the appellant in Criminal Appeal No. 716 is the mother of A-1. PW 1 is the father of the deceased while PW 2 is the wife of the brother of the deceased and PW 3 is the brother of the deceased.

The occurrence took place on 30.1.2001. The narration, as demonstrated before the Trial Court, was that the deceased was set on fire and she suffered 100% burnt injuries in the hands of the appellant and that A-5 - sister of A-1 who doused fire on the deceased also suffered injuries. In the postmortem examination report Ex.P-32, as many as four external injuries were noted which disclosed that deceased had suffered 100% burnt injuries and the cause of death was noted as "shock due to burns". Immediately after the death of the deceased, there was a statement made at the instance of PW1. However, subsequently on 8.2.2001, PW 1, father of the deceased, himself came forward with a complaint that there was a serious doubt about the death of the deceased and that the accused were responsible for the death, inasmuch as there were continuous demands of dowry, which ultimately forced her daughter to take the extreme decision to commit suicide.

The trial court, on a detailed consideration of the evidence placed before it had reached its conclusion that the cruelty meted out to the deceased was fully established, as against the family members of the accused and concluded that the death of the deceased was attributable to the appellants herein.

In the said circumstances, the trial court ultimately found them guilty for the offence punishable under Sections 498-A and 304-B IPC and Sections 4 & 6(2) of the Dowry Prohibition Act. In so far as A-1 is concerned, he is convicted under Section 304-B IPC and sentenced to undergo Rigorous Imprisonment for life. In so far as A-2 & A-3 are concerned, they were convicted under Section 304B IPC and sentenced to undergo Rigorous Imprisonment each for a period of seven years. No separate sentence was awarded for the offence punishable under Section 498-A IPC and Sections 4 & 6(2) of the Dowry Prohibition Act. In Addition, A-1 and A-3 were directed to pay a sum of Rs.50,000/- each as compensation to PW 1 and a sum of Rs.50,000/- each as compensation to the minor child Piyush Dalmia. A-4 and A-5 were acquitted and State did not challenge their acquittal. However PW 1 has filed the criminal revision challenging their acquittal.

The High Court, by its impugned judgment, which is challenged in these appeals has confirmed the conviction and sentence imposed on all the three accused and rejected criminal revision filed by PW 1,

Being aggrieved, the appellants have filed the said appeals.

As against the order dismissing the criminal revision, no challenge has been made by PW 1 in this Court. Therefore, the acquittal of A-4 & A-5 has become final and conclusive.

We are in these appeals concerned only with the conviction and sentence of A-1 & A-3, as A-2 is stated to have died during the pendency of the appeals and his name was deleted by an order of this Court dated 11.5.2007.

We have heard Mr. Ganguly, learned senior counsel for the appellants, Mr. S. Guru Krishna Kumar, Learned Additional Advocate General for the State and Mr. S.R.Singh, learned senior counsel appearing for the complainant.

Mr. Ganguly, in his submission taking us through the entire evidence placed before the trial court as well as the judgment of the Sessions Judge and the High Court contended that there was absolutely no evidence to show that any cruelty was caused on the deceased by way of demand of dowry. According to Mr. Ganguly, statement of PW 1 as well as that of the other three witnesses namely PW 2, PW 3 & PW 4 cannot be held to have been made out in order to hold that the appellants were responsible for the cause of death of the deceased.

Mr. Ganguly, Learned senior counsel would also submit that even the postmortem report does not go to show that there was any other overt act on part of the accused, much less, the appellant herein, that it does not show that the death of the deceased was due to any infliction of injury on the deceased before dousing her on fire in order to hold that the accused were responsible for the tragic death of the deceased.

Mr. Ganguly, would therefore contend that as there was no evidence as against the appellant, the conviction imposed upon them by the trial court as confirmed by the High Court calls for interference.

As against the above submission, Mr.S.Guru Krishnakumar, learned Adtl. Advocate General contended that the evidence of PW 4, who was an independent witness, had given the statement in the narrative form as to in what manner the accused caused torture on the deceased by way of demand of dowry over a period of time between the date of marriage namely 22.1.1999 till the date of her death 30.1.2001 and therefore the ultimate conviction and sentence imposed on the appellants do not call for interference.

Mr. S.R. Singh, learned senior counsel appearing for the complainant also supported the said submission of learned Additional Advocate General.

Having heard learned counsel for the respective parties and having given our serious consideration to the judgment impugned in these appeals, we find that the evidence available on record is to the effect that there were serious demands of dowry at the instance of the accused party as spoken to by the prosecution witnesses. Particularly the version of PW 1 to PW 4 cannot be totally ignored from consideration. The evidence adduced by PW 1 to 4, clearly establish that there were demand by way of dowry at the instance of the appellant while at the time of the marriage of the deceased with the appellant in Criminal Appeal No. 716 of 2007 and even thereafter. In fact, according to PW 1 on 22.01.1999 the engagement ceremony of A-5, sister of A-1 took place and on the same day A-1 and the deceased celebrated their marriage anniversary, and on that day also there was a demand for dowry made at the instance of the appellant.

In so far as that part of the evidence of PW 1 is concerned, we find sufficient corroboration of the said version at the instance of the other witnesses PW 2 to PW 4. We also do not find any flaw in the evidence tendered by PW 1 to PW 4 or anything was brought out in their cross-examination in order to hold that the said version as spoken to by those witnesses is not credible. However, even in regard to the said version of PW 1 to PW 4 stating that there was serious demand of dowry which resulted in cruelty inflicted upon the deceased and thereby she was forced to take the extreme decision to commit suicide by burning herself merited acceptance. In our considered

opinion, the said conclusion reached by the Trial Court was based on cogent and convincing reasoning and the confirmation of the same by the High Court was equally unassailable. However such evidence found proved can at best be directed against the appellant in Crl.A.No.717 of 2007 is concerned and does not implicate the accused in Crl.A.No. 716 of 2007.

In such circumstances, we only conclude that the conviction and sentence imposed on the appellant in Crl. A.No. 717 of 2007 was fully justified. In so far as the conviction as against the appellant in Crl.A.No.716 of 2007 is concerned, we find that her case stands on a different footing and deserves to be allowed.

The record also reveals that even otherwise, the appellant in Crl.A. No.716 of 2007 has suffered three years, two months and 19 days imprisonment and also suffering from cancer as revealed from the records pertaining to the treatment which she is undergoing from the Cancer Institute at Chennai.

In the circumstances, while confirming the conviction imposed on the appellant in Crl.A.No. 717/07, we hold that the sentence imposed on the appellant can be reduced to a minimum period of 10 years as against the imprisonment of life imposed upon the appellant. With the modification of the sentence imposed on the appellant in Crl. A. No. 717/07 and setting aside the conviction and sentence imposed on the appellant in Crl.A.No. 716/07, both the appeals shall stand disposed of.

It is reported that the compensation amount of Rs.50,000/- directed to be paid to PW 1 has been paid and also compensation amount of Rs.50,000/- was deposited in the name of the minor child Master Piyush Dalmia . If the said amount has not been paid the same shall be paid to PW 1 and also deposit be made in favour of minor child Piyush Dalmia within a period of six weeks from today.

With the above modifications, the appeals are disposed of.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi,
SEPTEMBER 19, 2012